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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/630,383 | 07/30/2003 | Benny E. Steffens | SGO2768 | 8342 |

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| EXAMINER | |
|---|---|
| BECKER, DREW E | |
| ART UNIT | PAPER NUMBER |
| 1761 | |

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|---|---|---|
| 3 MONTHS | 01/04/2007 | PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/630,383 | STEFFENS ET AL. | |
| | Examiner | Art Unit | |
| | Drew E. Becker | 1761 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *18 October 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *1-10 and 20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *11-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of group II in the reply filed on 10/18/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-10 and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim.

### *Double Patenting*

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claim 13 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 12. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### *Claim Rejections - 35 USC § 112*

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 15 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear whether all of the listed ingredients of claims 15 and 19 are required, or not. Sodium bicarbonate and yeast were commonly known leavening alternatives.

### *Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 11-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker [Des. 385,686] in view of Lira [Pat. No. 6,165,522].

Parker teaches a cylindrical rolled-up snack chip (Figure 1). Phrases such as "flattening", "removing", and "cooling" are merely p[referred methods of making the claimed product. Parker does not recite specific ingredients such as flour, oil, and salt (claim 11), seasoning, such as onions (claims 12-14), and the product having been baked (claim 16). Lira teaches a cylindrical rolled-up tortillas product comprising

ingredients such as cheese and grated onions (column 4, line 25), salsa (column 4, line 43), tortilla dough made from flour, salt and shortening (column 5, line 6), and the product having been baked in an oven (column 5, line 14). It would have been obvious to one of ordinary skill in the art to incorporate the ingredients and baking of Lira into the invention of Parker since both are directed to cylindrical roll-up food products, since Parker simply did not describe the ingredients used for the snack chip, since snack chips were commonly made from baked tortilla dough, and since Lira teaches that these ingredients were commonly used in cylindrical rolled-up tortilla products.

8. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker, in view of Lira, as applied above, and further in view of Lanner et al [Pat. No. 6,572,910].

Parker and Lira teach the above mentioned concepts. Parker and Lira do not recite cottonseed oil or corn flour. Lanner et al teach a tortilla chip comprising cottonseed oil and corn flour (column 6, lines 9-20 & 48-62). It would have been obvious to one of ordinary skill in the art to incorporate the ingredients of Lanner et al into the invention of Parker, in view of Lira, since all are directed to food products, since Parker already included a snack chip, since Lira already included a tortilla dough made from flour and shortening, and since Lanner et al teach that tortilla chips were commonly made from cottonseed oil and corn flour.

9. Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker [Des. 385,686] in view of Schwartz [Pat. No. 5,185,167].

Parker teaches a cylindrical rolled-up snack chip (Figure 1). Phrases such as "flattening", "removing", and "cooling" are merely p[referred methods of making the claimed product. Parker does not recite specific ingredients such as flour, oil, and salt (claim 11), seasoning, such as onions (claims 12-14), adding yeast (claim 15), and the product having been baked (claim 16). Schwartz teaches a cylindrical rolled-up pretzel product comprising ingredients such as cheese (Figure 4C, #24), pretzel dough made from flour and yeast (column 3, line 20), and the product having been baked in an oven (column 4, line 17). It would have been obvious to one of ordinary skill in the art to incorporate the ingredients and baking of Schwartz into the invention of Parker since both are directed to cylindrical roll-up food products, since Parker simply did not describe the ingredients used for the snack chip, since snack chips were commonly made from baked pretzel dough, and since Schwartz teaches that these ingredients were commonly used in cylindrical rolled-up pretzel products.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gum et al [Pat. No. 6,007,858], Armstrong [Pat. No. 2,726,156], Scott [Pat. No. 3,156,194], Packer et al [Pat. No. 5,348,751], Kobayashi et al [Pat. No. 5,538,414], Mayer [Ders. 17,150], Perky [Des. 66,300], Clement [Pat. No. 2,003,578], Stanley [Pat. No. 3,410,691], Momiyama [Pat. No. 4,247,567], Khan et al [Des. 382,385], and Frazee [Pat. No. 474,873] teach rolled food products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DREW BECKER
PRIMARY EXAMINER
12-29-06